IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6930 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUSTUFA YASINH - Petitioner(s)
Versus
DIST SUPERINTENDENT OF POLICE & 1 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner(s) : 1,MR IS SUPEHIA for Petitioner(s) : 1,
Ms. Kiran Pande, Asst. GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 15/02/2007

JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order or direction

directing the respondents to pay all terminal benefits to the petitioner including arrears of pension, gratuity, provident fund etc.

2. The petitioner was serving as Armed Force Police Constable in Surat (Rural) District. He applied on 7.10.1995 for premature retirement on the ground that he had put in about 27 years of service; by order dated 27.10.1995 his application was accepted; and he was ordered to retire voluntarily on 31.10.1995. It is the case on behalf of the petitioner that petitioner submitted a representation on 9.7.1996 and thereafter on 13th August 1996 to the Deputy Inspector General of Police, Surat Division, Surat requesting for terminal benefits. However, as the terminal benefits were not paid the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

3. Shri Supehia, learned advocate appearing on behalf of the petitioner has submitted that when the application of the petitioner was accepted and he was ordered to be retired voluntarily from 31.10.1995 the petitioner was entitled to gratuity amount as well as Provident Fund amount and other retiral benefits and the same were paid only in 1997, more particularly in the month of August 1997, and therefore it is requested to award interest on the delayed payment of retirement benefits. He has relied upon judgment of the Hon'ble Supreme Court in the case of ***H. Gangahanume Gowda vs. Karnataka Agro Industries Corpn.Ltd.,*** reported in ***(2003) 3 Supreme Court Cases 40*** and has submitted that the liability to pay gratuity is mandatory under the provisions of Payment of Gratuity Act and therefore interest on delayed payment of gratuity is mandatory and not discretionary if delay is not due to fault of the employee.

4. The petition is opposed by the respondents. Two Affidavits-in-Reply are filed on behalf of the respondents. At the outset, it is submitted that there is no inaction or negligence and/or inordinate delay in making payment of retiral dues. It is submitted that the respondents have acted promptly but the delay had taken place in finalising the retirement benefits in the peculiar facts of the case. It is submitted that the petitioner submitted the application for voluntary retirement on 7.10.1995 and requested to retire him voluntarily from 31.12.1995, however he came personally in orderly room and requested for transfer, which was rejected. However he requested for voluntary retirement which was accepted by the then D.S.P. with immediate effect and order of his voluntary retirement was issued with effect from 31.10.1995. It is submitted that in the meanwhile a proposal for getting requisite Service Certificate “Qualifying Service” was submitted to the Director

of Pension and P.F. Office vide letter dated 26.10.1995, and the Director of Pension, Ahmedabad raised queries asking as to why he was voluntarily retired and the period of application and notice being less than 3 months. That both the queries were replied vide office order dated 22.12.1995. Again a query was raised by the Director of Pension, Ahmedabad vide communication dated 10.1.1996 and it was advised that the said case being a special one special permission of the Government was required to regularise the voluntary retirement of the petitioner. It is further submitted that accordingly the office of DSP, Surat sent a detailed proposal to the Additional Secretary, Home Department explaining on the matter and requested to issue special permission for voluntary retirement. Permission was granted by the Government on 31.5.1997 and after receiving the same the pension case of the petitioner was submitted to the Director of Pension and P.F., on 10th June 1997. It is also

submitted that in the meantime the petitioner was called upon to give consent for temporary pension, however he had given in writing that he was not interested for temporary pension, and thereafter an order came to be passed on 13th June 1997 granting regular pension, and after the revised pension order dated 21.8.1997 all retiral benefits have been paid. It is therefore submitted that there is no deliberate delay and/or negligence on the part of the office, and in view of the peculiar facts and circumstances and the case being first of its kind it took time for getting requisite permission of the State Government as between the application for voluntary retirement and the date of voluntary retirement 3 months' notice period was not maintained. It is requested not to pass any order for payment of interest on delayed payment when there is no deliberate delay and/or inaction on the part of the respondents.

5. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that

the petitioner submitted the application on 7.10.1995 requesting for voluntary retirement on and with effect from 31.12.1995. It appears that after the application for voluntary retirement was made by him he requested for transfer to some nearer place which was rejected and therefore he had approached the authority for considering his case for early voluntary retirement which request was considered and he was permitted to voluntarily retire with effect from 31.10.1995. Before the actual order permitting him to voluntarily retire was passed the papers were already sent to the Director of Pension for necessary certificate and preparation of pension papers. However some queries were raised by the office of Director of Pension that the petitioner could not have been permitted to voluntarily retire as 3 months' notice period was not maintained and therefore the office of the DSP was advised to obtain special permission from the State Government. Accordingly after various correspondence between the Director

of Pension and DSP of Surat, the application was submitted to the State Government for granting special permission which was accepted on 31st May 1997. It also appears from the further affidavit-in-reply that there was correspondence between the State Government and the Office of DSP, Surat from 14.10.1996 till January 1997 for granting special permission to retire the petitioner voluntarily with retrospective effect, and thereafter the State Government granted permission on 31st May 1997. In the meantime, the petitioner was asked whether he was ready to accept adhoc pension or not. However, by communication dated 9.6.1997 the petitioner refused to get adhoc pension. That after necessary permission from the State Government immediately the office of DSP acted promptly and papers of pension case of the petitioner were sent to the DSP, Ahmedabad on 10th June 1997; the DSP had issued pension order on 13th June 1997; and thereafter within 2 months the Treasury Officers had made payment of retiral

dues. Thus, considering the aforesaid facts, there is no inaction and/or deliberate delay on the part of the respondents. The case of the petitioner being a special case and the application for voluntary resignation was accepted without maintaining three months gap, and after the request of the petitioner for voluntary retirement was accepted immediately, queries were raised by the Director of Pension and which had necessitated the respondents to get special permission from the State Government pointing out that the case of the petitioner being first of its kind, subsequently the State Government granted retrospective permission to voluntarily retire the petitioner and immediately on getting necessary sanction the retiral benefits and pension were paid. Therefore, there is no deliberate delay much less any delay on the part of the respondents. Therefore in the peculiar facts and circumstances of the case, the resolution dated 8th December 1994 which is relied upon by the

petitioner will not be of any assistance to the petitioner as delay cannot be attributed to the petitioner and so also to the State Government. The petitioner, therefore, is not entitled to interest on the delayed payment as per resolution dated 8th December 1994. Similarly, the judgment relied upon by the petitioner in the case of *H. Gangahanume Gowda vs. Karnataka Agro Industries Corpn.Ltd.,[supra]* would also not apply to the facts of the case as the case of the petitioner was first of its kind, and though the pension papers were sent immediately and subsequently the queries were raised though not technical were justifiable, and the moment the State Government granted retrospective permission considering it as a special case, and immediately thereafter his retiral benefits were paid, as stated above the delay is neither due to fault on the part of the employee nor due to fault on the part of the employer. Under the circumstances, the petitioner is not entitled to interest on the delayed payment

as prayed for.

6. For the reasons stated, the petition fails. The petition has become infructuous qua the claim of interest on retiral dues as the retiral dues are already paid to the petitioner. Rule is discharged. No costs.

[M.R. Shah, J.]

RMR.